

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Parts 1, 21, 73, 74 and 101 of the)	WT Docket
No. 03-66		
Commission's Rules to Facilitate the Provision of)	RM-10586
Fixed and Mobile Broadband Access, Educational)	
and Other Advanced Services in the 2150-2162)	
and 2500-2690 MHz Bands)	
)	
Part 1 of the Commission's Rules - Further)	WT Docket No.
03-67		
Competitive Bidding Procedures)	
)	
Amendment of Parts 21 and 74 to Enable)	MM Docket No.
07-217		
Multipoint Distribution Service and the)	
Instructional Television Fixed Service)	
Amendment of Parts 21 and 74 to Engage in Fixed)	
Two-Way Transmissions)	
)	
Amendment of Parts 21 and 74)	WT Docket No.
02-68		
of the Commission's Rules With Regard to)	RM-9718
Licensing in the Multipoint)	
Distribution Service and in the)	
Instructional Television Fixed Service for the)	
Gulf of Mexico)	

COMMENTS OF EDUCATION SERVICE CENTER REGION 10

Respectfully Submitted

EDUCATION SERVICE CENTER
REGION 10

By: James E. Meyers /s/
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SUMMARY OF COMMENTS OF EDUCATION SERVICE CENTER REGION 10

Educational Service Center Region 10 ("Region 10") believes the Commission can accomplish its broadband policy goals with some modest measures to ameliorate the problems facing incumbent ITFS licensees, such as Region 10, that seek merely to maintain their current levels of service and attendant interference protection. Region 10 supports the Coalition's band segmentation plan as the lesser most of unenviable options facing incumbent ITFS licensees.

However, the Commission must establish a mechanism to ensure that incumbent ITFS operators, including those presently transmitting in analog such as Region 10, are sufficiently re-equipped without cost to them to keep their current levels of service.

Region 10 suspects that it is hardly facing alone the proposed loss of spectrum, reduced service area, reduced receive site protection and BTA bifurcation. Unless the Commission deals more carefully with the myriad of anomalies that present themselves in the various proposals, traditional (high power) ITFS service will be severely curtailed. The Commission cannot make a sustainable public interest finding in keeping with Section 316(a) of the Act or its overall Section 151 mandate if the result is the de facto arbitrary exclusion of existing members of the public who are quantifiable and whose numbers are significant, namely the educational community. (For example, the Commission has proposed unlicensed WI FI operations in the 5 GHz band for comments that are not yet even due to be filed.)

For any band segmenting plan to be operationally feasible without eviscerating incumbent operations, it is essential that the Commission provide at little or no cost to affected ITFS incumbents a mechanism for upgrade that includes conversion from analog to digital with the capability of transmitting as many program streams as there are channels under the current regulations, e.g., four streams.

Region 10 strongly opposes an across-the-board power reduction and power reductions at PSA boundaries. Even a modest

power reduction of 10 dB (e.g., reducing transmitter output power from 50 Watts to 5 Watts) would significantly reduce the service area to less than 5 miles, necessitating multiple transmitters and sites for Region 10 to sustain service to its registered receive sites. Requiring power reductions at PSA borders will also cause loss of service to receive sites, particularly to analog signals. The Coalition's band plan proposal generally would not create interference among Mid band co-channel and adjacent channel licensees because the parameters would remain the same. The Commission needs to clarify that the discussion of power reduction at PSA borders applies only to low power channels under the Coalition's band segmentation plan. Moreover, such signal strength limits should only apply when transition is completed and a proponent has come forward.

Unlicensed operations should always be on a secondary basis. Even primary basis unlicensed operations are unsuitable, such as, for "telemedicine."

The PSA of the GSA proposed for Mid band spectrum licensees will maroon 16 of Region 10's grandfathered, registered receive sites served by its two ITFS facilities. The marooned sites are public educational institutions with 22,595 students. Protection should be required for all grandfathered, registered receive sites, including those outside of current PSAs. Region 10 has two grandfathered registered sites outside its current PSAs. These serve public educational institutions with 1,282 students.

In many instances grandfathered registered receive sites exceed the 30-foot height assumption. Since registered receive sites are already part of the Commission's ITFS data base (ULS) and are also included in station files, no additional burden will be placed on Commission resources to leave receive site protection requirements in place for these sites. Traditional validating mechanisms are not affected. A competent licensee will not "confuse" its protection obligations with its GSA. The "cost" of no longer protecting grandfathered, registered receive sites overwhelms the aspirational "benefits" thought to be derived.

A new band plan mechanism essentially should be proponent-based. A blend of a proponent-based and date-certain approach can be developed in a manner that ensures high power ITFS incumbents will maintain their program channel capacity and have their transition costs reimbursed without lengthy "daisy chains," irrespective of what approach the Commission adopts for low power licensees. Mid band spectrum restructuring could be undertaken separately, even at a different time. Since many of the interference problems amongst high power licensees have already been resolved or are resolvable under current standards, transition costs could be limited to ITFS Mid band license operations, with the first proponent bearing the cost of relocating the incumbent's ITFS operations to the incumbent's Mid band (4th channel) spectrum. In this manner the Commission could establish a separate mechanism for transitioning low power

spectrum without disrupting incumbent high power operations on x4.

Voluntary restructuring/disaggregation should not be precluded under the approach discussed by Region 10. ITFS licensees who retain their Low and/or High band spectrum should have longer than 18 months to develop the spectrum for educational uses.

Under an auction approach, Low and High band ITFS and MDS spectrum should be auctioned separately from Mid band spectrum. Region 10 does not object to ITFS eligibility requirements being extended to MDS-eligibles for such spectrum. The Commission needs to provide direction for auctioning/protecting PSAs that overlap BTA boundaries.

Spectrum mask limits under the current rules should be maintained for high power channels.

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COMMENTS OF EDUCATION SERVICE CENTER REGION 10

Education Service Center Region 10 (" Region 10"),
through undersigned counsel, submits these comments to
the Notice of Proposed Rulemaking and Memorandum
Opinion and Order in this matter above-captioned, FCC
03-56, released April 2, 2003 (" Notice").

I. INTRODUCTION (REGION 10 SNAPSHOT ENTERING
BRAVE NEW WORLD)

Region 10 is a political subdivision of the State of Texas engaged in the distribution of instructional programming to public educational institutions located in its region. Because of its ITFS programming commitments, Region 10 does not lease excess channel capacity.

Region 10 serves its region with two ITFS stations, WHR 695, Ennis, TX, channels C1 through C4, and WHR 718, McKinney, TX, channels G1 through G4. Region 10's ITFS stations transmit in analog at 50 Watts transmitter output power to 39 registered and grandfathered educational receive sites from the Ennis transmitter, and to 37 registered and grandfathered educational receive sites from the McKinney transmitter. One of Region 10's grandfathered receive sites served by its Ennis transmitter (R11) is outside (by 1.1 miles) of its 35-mile Protected Service Area ("PSA"); one of Region 10's grandfathered receive sites served by its McKinney transmitter (R23) is outside (by 2.9 miles) of its PSA. [See Attachment 2 (Ennis), infra. and Attachment 2 (McKinney), infra.]

Region 10's educational region is neither coextensive with county boundaries nor contained within the Dallas-Ft.Worth Basic Trading Area (" BTA"), which is BTA 101. Attached as Attachment 1 is an overlay map of Region 10's region depicting it in relation to county boundaries. Region 10's region and ITFS service areas are in eight counties in the Dallas-Ft.Worth BTA (BTA 101) and in two counties in the Sherman-Denison BTA (BTA 418).1

Under the so-called " Breckenridge Agreement" advanced by the Coalition (paraphrased in ¶87 of the Notice) to resolve interference in overlapping PSAs, Region 10 stands to lose a significant portion of its present PSA containing many of its registered, grandfathered receive sites if in this manner the Commission determines " protection" to receive sites in incumbent licensees' Geographic Service Areas (" GSA").

Attached hereto as Attachment 2 are overlay maps depicting Region 10's respective PSAs and depicting overlapping PSAs of other ITFS licensees. The overlay maps also depict Region 10's new GSAs under the

1 Region 10's Educational Service District region is in the following counties in the Dallas-Ft. Worth BTA: Dallas, Collin, Ellis, Grayson, Hunt, Kaufman, Rockwall, Van Zandt;

proposed "Breckenridge Agreement" and those of Region 10's receive sites that would be "marooned" outside of Region 10's new GSAs. Under the new GSA for its McKinney facility, 12 of Region 10's 37 sites will fall outside of the new GSA. For its Ennis facility, 4 of Region 10's 39 sites will fall outside of the new GSA.

Region 10's marooned receive sites provide ITFS programming to public students with 25,595 students. Protection to these "marooned" receive sites, as proposed, would be subject to the vagaries of "good neighbors" and their attendant, and quite likely incompatible operations.

Under the Commission's proposal to consider reducing power instead of segmenting the spectrum, Region 10 would need to acquire an extensive low power repeater operation to fulfill its educational mandate.

Such is not economical and would be prohibitively expensive, particularly for Region 10 and other ITFS licensees faced with present-day and foreseeable budget constraints.

Under the Commission's band segmentation proposals, Region 10 would face a similar prohibition. Under the

and in the following counties in the Sherman-Depison BTA: Fannin, Grayson.

Coalition's band segmentation plan, Region 10 would have to replace its current analog transmitters with digital equipment capable of streaming four video channels over 6 MHz and would have to retrofit all of its 76 receive sites. Efficiency and opportunity from technological advancements to video applications available to 4 high power, 6 MHz channels presently licensed to the ITFS service also would be lost.

Region 10 suspects that it is hardly facing alone this loss of spectrum, reduced service area, reduced receive site protection, and BTA bifurcation. Unless the Commission deals more carefully with the myriad of anomalies that present themselves in the various proposals, traditional (high power) ITFS service will be severely curtailed, which the Commission should not choose to allow (Notice, ¶88). The Commission may anticipate that its broadband policy and goals will benefit some unquantified aspect of the public. But it cannot necessarily make a sustainable public interest finding in keeping with Section 316(a) or its overall Section 151 mandate if the result is the de facto arbitrary exclusion of existing members of the public who are quantifiable and

whose numbers are significant, namely the educational community which the ITFS serves and for which it was created. (See, e.g., Note 3, infra., where the Commission has proposed unlicensed WI FI operations in the 5 GHz band for comments that are not even due before those in this proceeding are due; see also Section III of these comments, infra., where Region 10 stands to lose protection to 16 receive sites serving public educational institutions with student bodies of 22,595 pupils.) Region 10 believes that the Commission can accomplish its broadband policy goals with some modest measures to ameliorate the problems facing incumbent ITFS licensees, such as Region 10, that seek merely to maintain their current levels of service and attendant interference protection.

II. BAND PROPOSALS (AND CONVERSION FROM ANALOG)

For Region 10 the need to preserve spectrum for high power stations is paramount (Notice, ¶57). Although the lesser most of unenviable options facing

high power incumbent ITFS licensees, the Coalition has

proposed the best alternative. 2 Both conventional high power ITFS and low power cellular operations 3 would be able to coexist with reasonable predictability. However, in adopting and implementing the Coalition plan, the Commission must establish a mechanism to ensure that analog operators, such as Region 10, are reequipped

2 Region 10 strongly opposes an across-the-board power reduction and power reductions at PSA boundaries. (Notice, ¶¶49, 55). Even a modest power reduction of 10 dB (e.g., reducing transmitter output power from 50 Watts to 5 Watts) would significantly reduce the service area to no more than 15 miles from the transmitter site. The NPRM is proposing power reductions of more than 25 dB. This would reduce service to less than 5 miles, necessitating multiple transmitters and sites in order for Region 10 to sustain service to its current registered receive sites. Requiring Mid band signal power reductions at PSA borders will also cause loss of service to receive sites, particularly to analog signals (e.g., Notice, ¶131). As referred to by the Commission (Notice, ¶87, note 184), ITFS PSAs were extended from a radius distance of 15 miles (for nondirectional service) to 35 miles in September, 1995. In response, many ITFS licensees upgraded to transmitter output powers of 50 Watts or more. The Coalition's band plan proposal generally would not create interference among Mid band co-channel or adjacent channel licensees because those parameters remain the same. Under the Coalition's proposal there is no reason to entertain the issue of power reduction for Mid band spectrum and the concomitant universal equipment change outs that would necessarily be required for all incumbents.

3 Unlicensed operations should always be on a secondary basis. Because of interference potential among unlicensed users, even primary basis unlicensed operations are unsuitable, such as, for "telemedicine" (Notice, ¶81). Telcos seeking to expand WI FI hot spots for simple laptop data exchanges are seeking licensed spectrum because of interference experienced from unlicensed operations. Moreover, the demand for additional unlicensed spectrum in the ITFS band needs to be reconciled with the Commission's recent proposal to provide unlicensed spectrum in 5.47-5.725 GHz band. See Notice of Proposed Rulemaking in ET Docket No. 03-122, FCC 03-110, 18 FCC Rcd 11581 (released May, 15, 2003). Notably, the comment period in that docket remains open as of this September 8, 2003, due date for these comments.

sufficiently to keep their current levels of service.4

Region 10 submits that analog to digital conversion is a significant prerequisite for the Coalition's plan to be operationally feasible without eviscerating incumbent operations. Region 10 suspects that at least 90% of the ITFS community remains in analog mode. Many if not most of them are in no position to absorb the costs of such a conversion. In this regard, analogies drawn by the Commission to commercial services' spectrum restructuring, e.g., FSS and PCS, are inapposite (Notice at ¶¶ 103, 104). An essential part of any ITFS band segmenting plan, where its incumbents are educational institutions and non-profit organizations, is to provide them a mechanism for upgrade at little or no cost to the affected ITFS incumbent. 5 Otherwise, the

4 Under the Coalition proposal, Region 10 would need to convert to digital transmission equipment and to retrofit its receive sites; it would then need that equipment to be able to transmit at least four separate, simultaneous programming streams in order to maintain its current four-channel level of educational services at each of its registered sites.

5 Unless the Coalition's transition/reimbursement proposal is adopted, the SMRS conversion approach in 47 C.F.R. § 90.699 is the closest approximation to affording ITFS incumbents the least disruptive restructuring reimbursement mechanism. Under the Coalition's

Commission, in effect, is constructively evicting these incumbents.

III. GEOGRAPHIC LICENSE AREAS FOR ITFS INCUMBENTS
(PROTECTION OF REGISTERED RECEIVE SITES)

Many incumbent ITFS licensees, including Region 10, will have marooned receive sites under the Coalition's proposal to have the Commission codify what it calls "the current practice." (Notice, ¶87). Registered grandfathered receive sites should always be protected, including those outside current PSA boundaries. Per the Commission's request (Notice, ¶88), Region 10 has two grandfathered, registered receive sites outside its respective PSAs: one at Ennis and one at McKinney. The Ennis site, R11, is located 36.1 miles from its transmitter. See Attachment 2 (Ennis). The McKinney site, R23, is located 37.9 miles from its transmitter. See Attachment 2 (McKinney). By the same token, Region 10 will have 16 "marooned" receive sites. Id. The marooned sites comprise 21% of the 76 sites served by its two facilities. Region 10 provides ITFS programming to 25,595 public school students at these sites. See the fourth paragraph of Section I. of these comments.

band segmenting scenario, the first proponent seeking restructuring on any portion of the incumbent's currently-licensed spectrum should bear the cost of total restructuring, since the incumbent's full power operations would then be affected across-the-board. While not necessarily inclusive of the many issues surrounding such a relocation mechanism, a simplification of the SMRS approach is discussed in Section IV of these comments, infra.

The overlay and underlay licensing approaches discussed by the Commission make required protection of these sites all the more important. Many of the interference resolution techniques employed under the so-called “Breckenridge Agreement,” all of which were reached voluntarily, involve protecting not only the receive site location, but also the specific height of the receive site, which in many instances exceed the 30 foot height assumption. Without continued accommodation of the height variable, many registered sites will likely experience irresolvable co-channel interference from nearby stations in overlapping and adjacent PSAs and from other more distant stations, often too late to reconcile since actual interference will be the triggering event absent this protection requirement. Once offending equipment is purchased and installed, the burden will shift de facto to the incumbent to get the damage undone, with few defensive options available. In Region 10’s case, loss of its R11 receive site (1.1 mile beyond current Ennis PSA) would mean loss of ITFS programming to the Hubbard School District with 481 enrolled students. Loss of protection to its R23 receive site (2.9 miles beyond current McKinney PSA) would mean loss of ITFS programming to the Lone Oak School District with 801 enrolled students. Loss of protection to its 16 marooned sites would result in a loss of service to 22,595 students at public educational

institutions.

Since registered receive sites are already part of the Commission's ITFS data base (ULS) and are also included in the ITFS station files, no additional burden will be placed on Commission resources to leave receive site protection requirements in place for these sites. Traditional interference validating mechanisms are not affected. A competent licensee will not "confuse" its protection obligations with its GSA (Notice, ¶88). The empirical "cost" of no longer protecting grandfathered, registered receive sites overwhelms the aspirational "benefits" thought to be derived.

IV. NEW BAND PLAN TRANSITION MECHANISMS (PROPONENT-BASED AND DATE-CERTAIN INCLUDING INITIAL DIGITAL EQUIPMENT FOR HIGH POWER INCUMBENTS; ITFS ELIGIBILITY; DISAGGREGATION; TIME TO CONSTRUCT; BTA OVERLAP)

In line with the Coalition's approach, the new band plan mechanism essentially should be proponent-based. In light of the Commission's suggestion that the transition period should be a date certain (Notice, ¶¶101-105), a blend of a proponent-based and a date-certain approach could be developed in a manner that ensures that the high power incumbent will maintain its program channel capacity and will have its transition costs reimbursed without lengthy "daisy chain" scenarios, irrespective of what approach the Commission adopts for low power licenses. Such an approach, embodying the Coalition's band segmentation plan,

could create sublicenses consisting of the incumbent's Low band and High band.

Incumbents should be allowed to disaggregate these bands. 6 (Notice, ¶171) for purposes of assignment and, if applicable, auction participation. Mid band spectrum

restructuring transition could be undertaken separately, even at a different time, perhaps after Low and High band restructuring has occurred. 7

Since many of the interference problems amongst high power licensees have already been resolved or are resolvable under current standards, transition costs could be limited to ITFS Mid band spectrum operations, including the initial conversion cost from analog to digital. Irrespective of whether its Low or High band spectrum is acquired by auction, the first proponent would bear the cost of relocating the incumbent's entire high-power ITFS operations to the incumbent's Mid band spectrum, including, if necessary, retrofitting incumbent analog transmission and reception facilities with digital transmission and reception facilities capable of providing the same number of program streams (e.g., four) that the incumbent had as channels under its incumbent ITFS license. If the proponent fails to follow-through, the incumbent should be permitted to continue its current

6 Disaggregation also should be permitted in the Mid band.

7 This approach would appear to obviate the Commission's concern with a "consistent licensing approach across the entire band" (Notice, ¶63).

operations. See, e.g., 47 C.F.R. § 90.699(e).

Under a high power incumbent date-certain regime, several uncomplicated versions should be workable with receive site protection requirements remaining in place. In both an auction and non-auction scenario, the rules could grandfather

current x4 8 channel operations and protection requirements while accepting analog to digital change outs to x4 as a minor change.

In a non-auction scenario, the incumbent should be allowed to continue operating on all channels at current levels after the “date certain” until approached by the proponent, at which time the proponent would bear the cost of the analog change out. Digital x4 operations would require little modification. New receive site locations would be subject to GSA (PSA) requirements on a going-forward basis. In this manner the Commission could establish a separate mechanism for transitioning low power spectrum without disrupting incumbent high power operations on x4.

The suggested approach is not to preclude voluntary restructuring/disaggregating by incumbents, for example, to inaugurate their own

8 By “x4” is meant the 4th channel in current ITFS channel groups, e.g., A4, B4, C4, etc.

low power operations or to assign or to amend lease agreements to permit low power lessees/assignees to utilize the incumbent's Low and High band spectrum. Incumbent licensees who do not disaggregate but who lease should be allowed to retain their recapture capacity (e.g., 5 percent each) on the lower and upper bands for their own TDD/FDD operations, envisioning access to such being provided by present or future lessees. By the same token, incumbent ITFS licensees who retain their Low and/or High band spectrum should not be required to utilize it until after a sufficient time period has been established to develop the spectrum for educational uses. Such a time period should exceed the current 18-month period (Notice, ¶192).

Under a “date certain” auction scenario (Notice, ¶¶ 105, 244, 245), transition issues could be avoided where incumbent ITFS licensees auction their Low and High band frequency. Under the auction approach, the combined ITFS/MDS auction (of Low and High band spectrum) with the outbidding incumbent able to keep its spectrum would seem most likely to establish the highest incentive for incumbents to participate (Notice, ¶¶244, 245). By the same token, if the Commission institutes a restructuring auction, Region 10 does not object to ITFS eligibility requirements being extended to MDS eligibles (Notice, ¶107). ITFS incumbents either participating or declining to participate in the auction should be

allowed to continue their current operations even after the auction “date certain” until approached by a proponent. As above, such proponent would bear the cost of the analog change out for the incumbent’s Mid band operations.

The Commission needs to provide direction for auctioning/protecting PSAs that overlap BTA boundaries, such as is the case with Region 10. The issue is unique to ITFS licensees, such as Region 10, with registered, grandfathered receive sites “marooned” in a BTA adjacent to the BTA where the transmitter is located. See Attachments 1 and 2 and note 1, supra. The Commission has indirectly recognized this problem (Notice, ¶72). While protection requirements ostensibly would be extended across BTA boundaries, the scenario presents itself of an incumbent ITFS licensee (not necessarily Region 10) seeking to auction its Low and/or High band (or Mid band) spectrum. Depending on which BTA is being auctioned, the incumbent is faced with bifurcating its PSA. If the marooned spectrum is auctioned first, then the value of the unauctioned adjacent BTA spectrum is affected (and vice-versa). A simultaneous auction would seem almost, impossibly, to require arbitrage to deal with BTA-marooned High and Low band spectrum (e.g., Notice, ¶68).

V. TECHNICAL ISSUES (SIGNAL STRENGTH; MASKING)

The Commission should clarify that the discussed signal strength limits at

GSA boundaries (Notice, ¶131) apply only to low power channels under the Coalition's band segmentation plan. Moreover, the signal strength limits should only apply when transition is completed and a proponent has come forward.

On masking (Notice, ¶140 and n.326), spectrum mask limits under the current rules should be maintained for high power channels.

VI. CONCLUSION

The Commission should make every effort to preserve high power ITFS service. The Commission should adopt the Coalition's band segmenting proposal along with the safeguards and suggestions made herein.

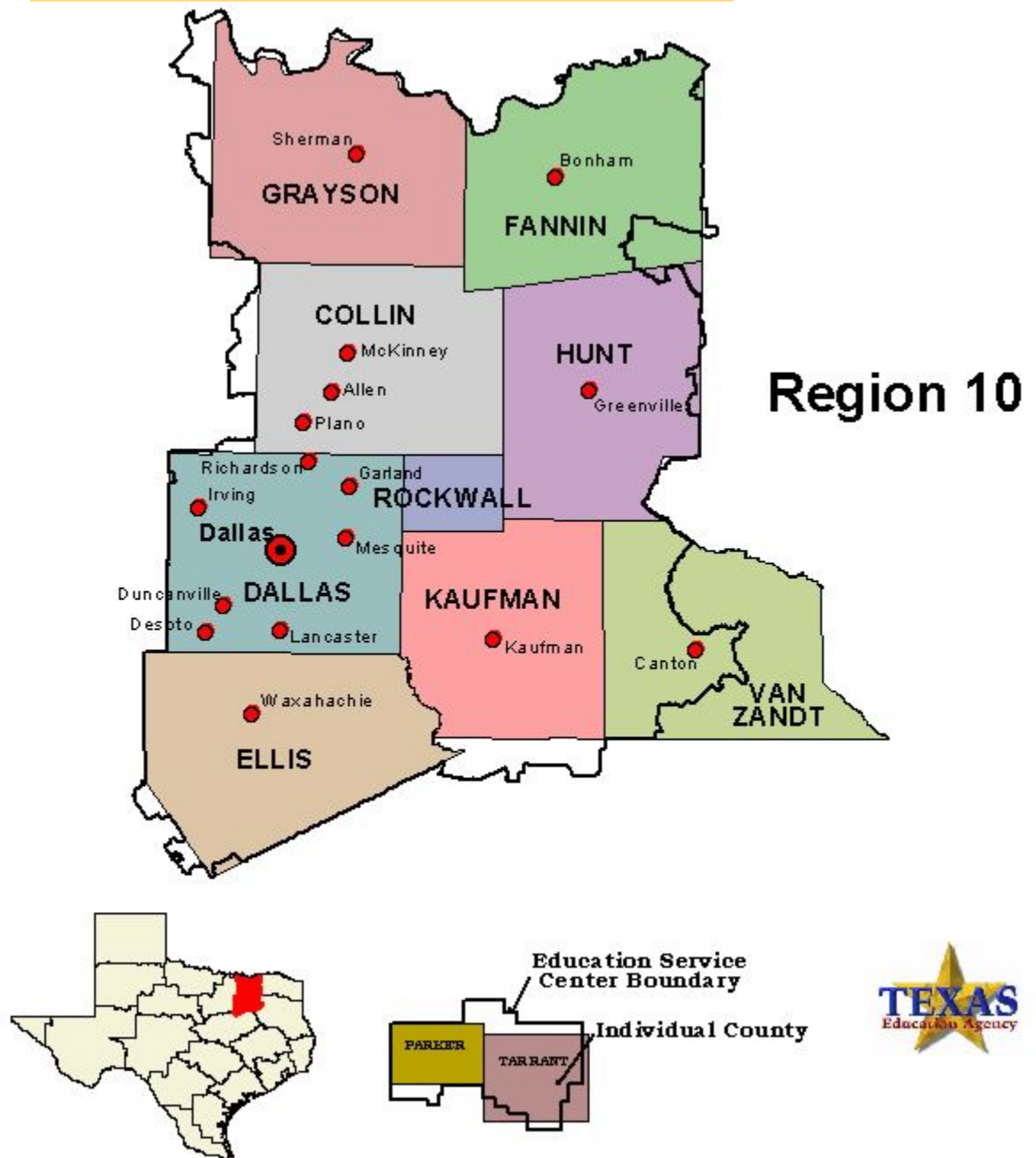
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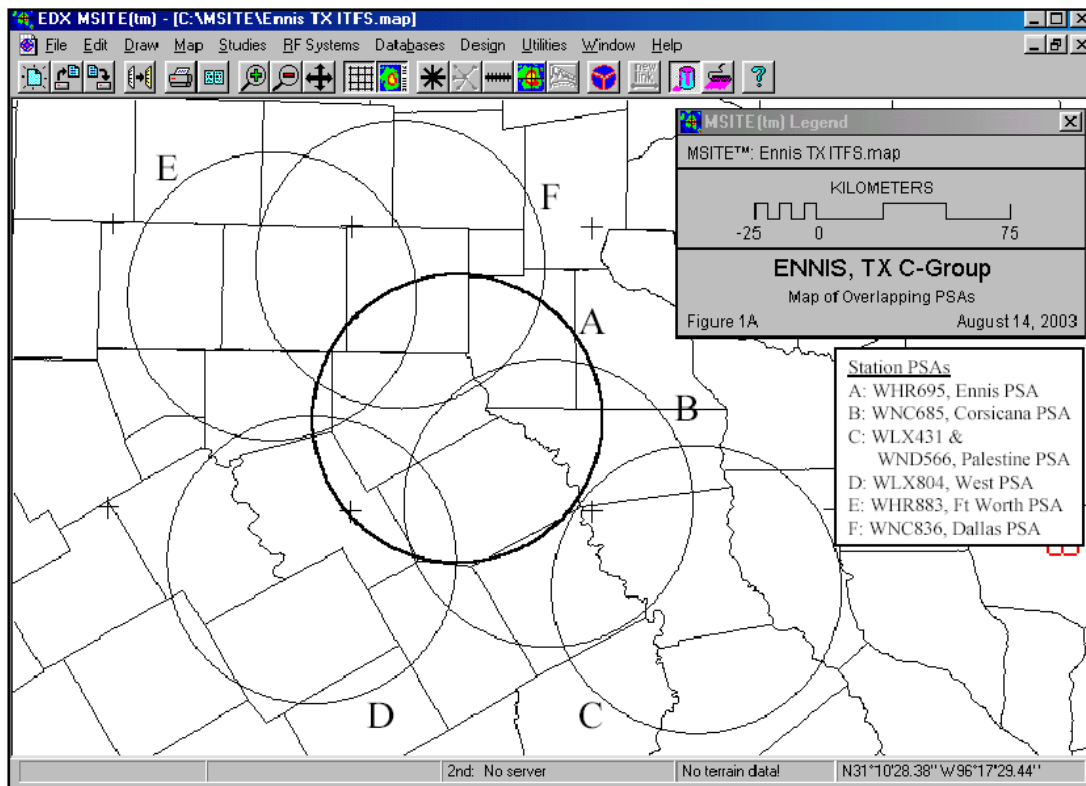
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REGION 10

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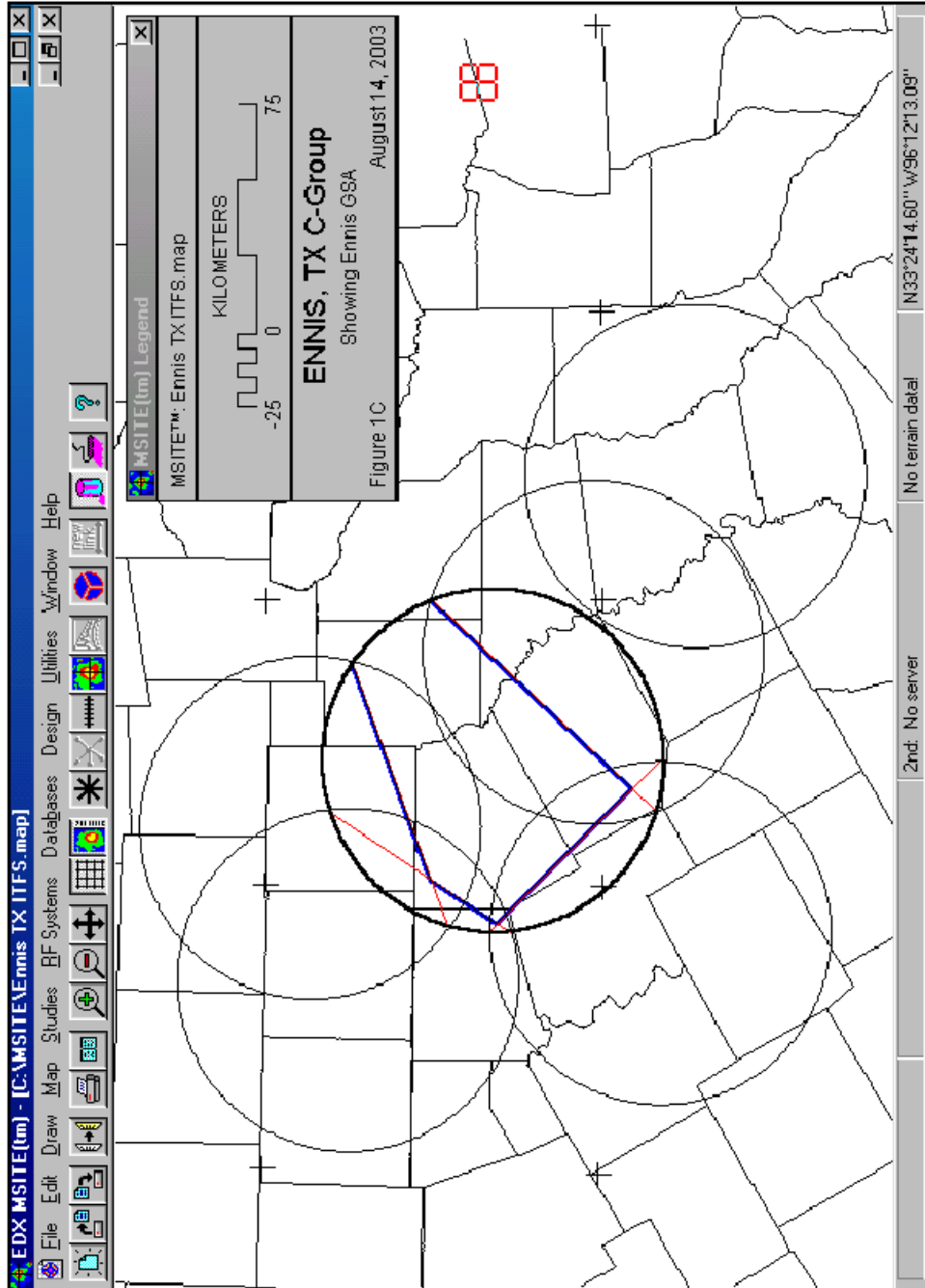
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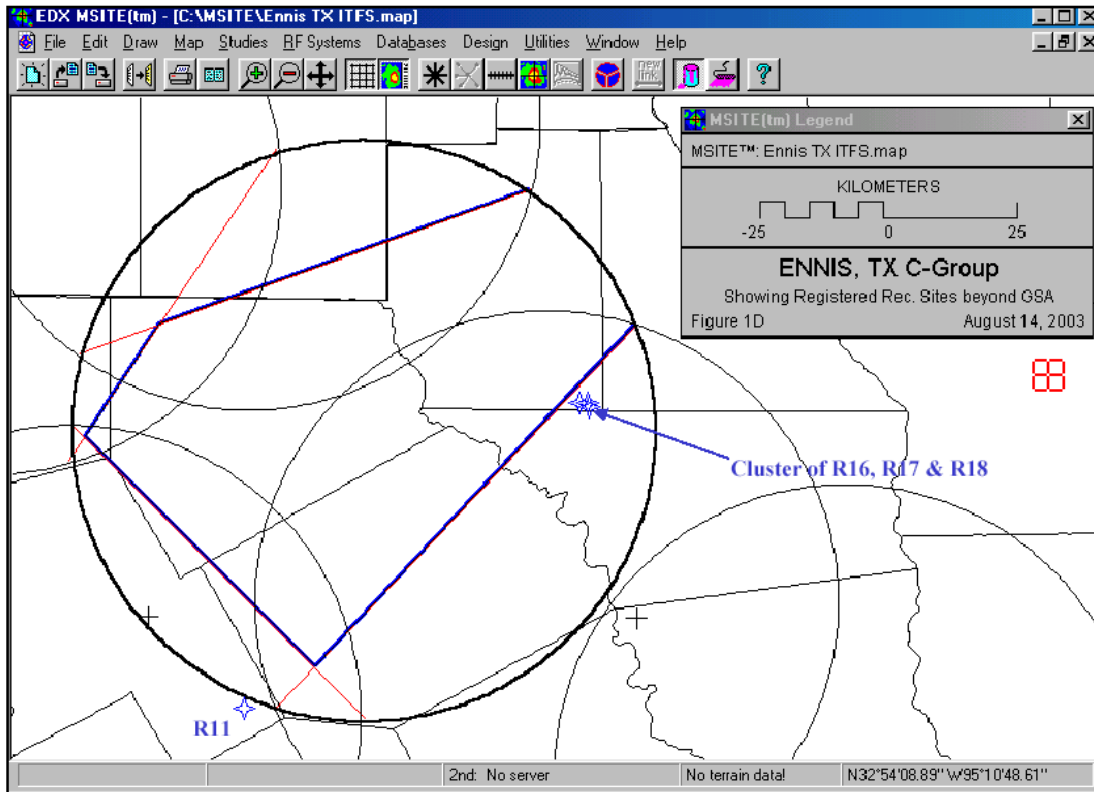
Counties in Region Ten

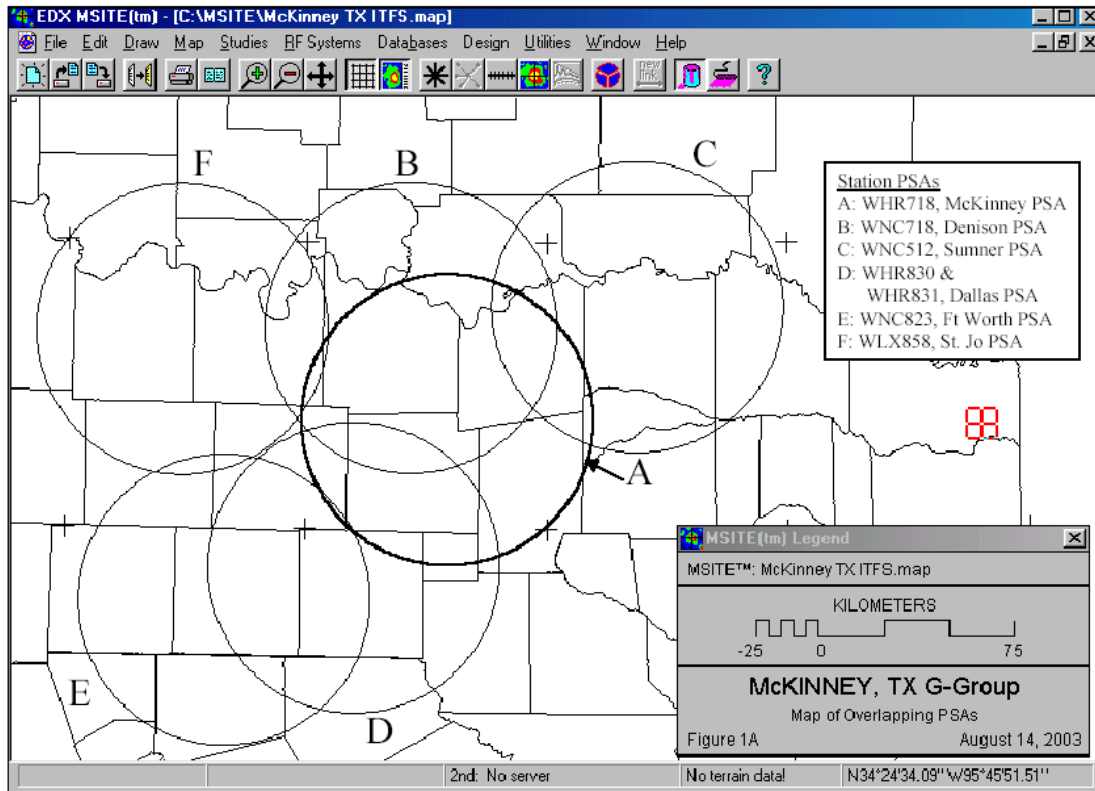


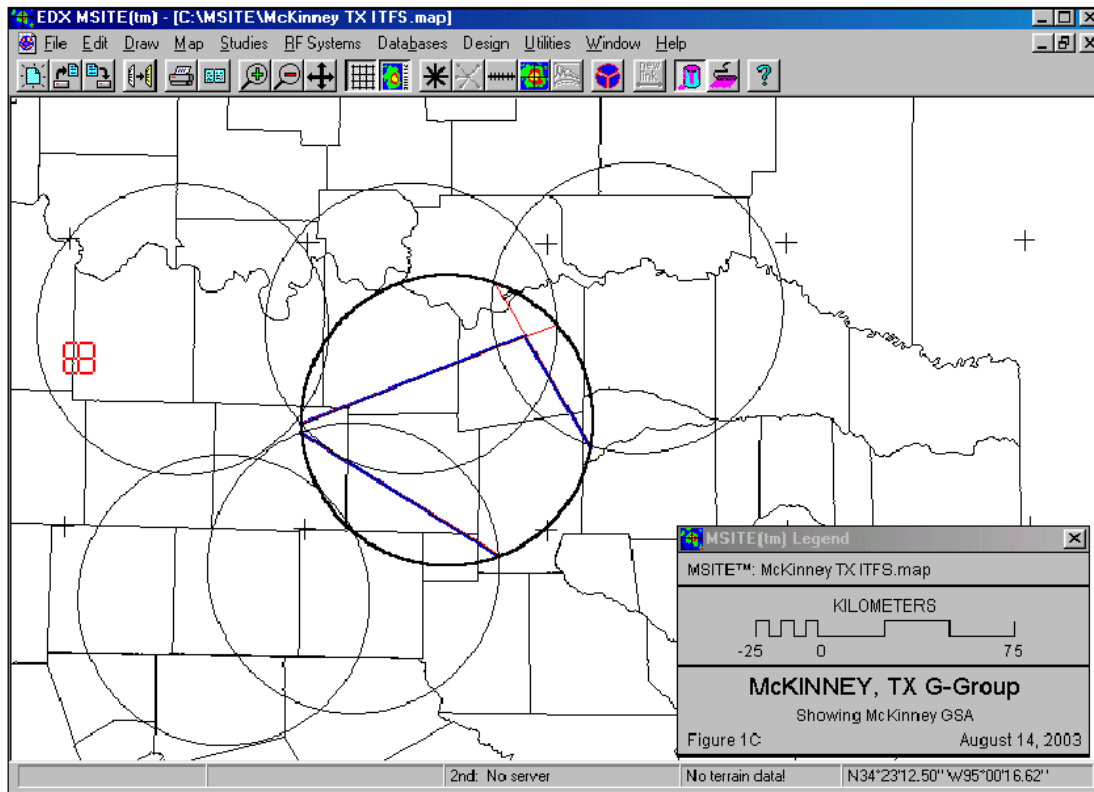


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